

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**SANDY E. GLENN**

**Claimant**

VS.

## ADM ARKADY

Respondent

AND

## OLD REPUBLIC INSURANCE COMPANY

Insurance Carrier

AND

**KANSAS WORKERS COMPENSATION FUND**

Docket No. 159,979

## ORDER

**ON** the 17th day of March, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge Robert H. Foerschler, dated February 4, 1994, came on for oral argument by telephone conference.

## APPEARANCES

The respondent and insurance carrier appeared by and through their attorney, Denise E. Tomasic of Kansas City, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Karen D. Rein of Overland Park, Kansas. The claimant, having previously settled its interest in this matter, appeared not. There were no other appearances.

# RECORD

The record considered for purposes of this appeal consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the transcript of proceedings before Administrative Law Judge Robert H. Foerschler, on February 4, 1994.

## ISSUES

Respondent contends that the Administrative Law Judge exceeded his jurisdiction by entering the Order of February 4, 1994, which denies respondent's motion to quash

notices to take depositions and grants the motion of the Kansas Workers Compensation Fund for an extension of terminal date. A determination in this matter also requires the Appeals Board to address the issue of its jurisdiction to review this order pursuant to K.S.A. 44-534a and K.S.A. 44-551.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The facts relevant to a determination of this appeal are not in dispute. They are essentially as set out by respondent in its request for review. The Fund was implied in this case on or about June 11, 1992. A settlement was entered into between claimant and respondent which was presented at a settlement hearing held on October 14, 1993. At that time the issues between the respondent and the Fund were reserved. Thereafter, on December 8, 1993, a prehearing settlement conference was held at which time terminal dates were set of February 1, 1994 for the respondent, and February 15, 1994 for the Fund.

On January 18, 1994 counsel for the Fund made a request for extension of terminal date in letter form and on January 20, 1994 mailed notices to take the depositions of certain medical experts on February 22, 1994 and on March 15, 1994.

Counsel for respondent filed its Motion to Quash Depositions on January 28, 1994.

A hearing was held on February 4, 1994 by Judge Foerschler at which time he found good cause to have been shown for giving the Fund an extension of its terminal date until 10 days after the depositions scheduled for March 15, 1994 and denied respondent's motion to quash the depositions. It is from this order that the respondent takes its appeal.

The first issue to be determined by the Appeals Board is whether the Order by the Administrative Law Judge should be treated as an order from a preliminary hearing or as a final order. Although final orders are subject to de novo review by the Appeals Board, orders from preliminary hearings are reviewed only to determine whether the Administrative Law Judge exceeded his or her jurisdiction. In appeals from preliminary orders, the Appeals Board reviews de novo on the record only jurisdictional findings.

Although certain orders, like an award, may be a final order and thereby subject to de novo review by the Appeals Board pursuant to K.S.A. 44-551(b)(1), an order with respect to evidentiary rulings are preliminary and, as such, are subject to the limitations prescribed by K.S.A. 44-551(b)(2)(A), which states in pertinent part:

"If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing."

The order before the Appeals Board is in the nature of a preliminary order as opposed to a final order after a full hearing on the claim. Although the respondent's motion to quash was denied, its objection to the evidence can be otherwise preserved and accordingly reviewed at the appropriate time in the proceedings. In addition, here, as with a preliminary order, there has not been a full hearing on the claim. Rather, the Administrative Law Judge expressly found good cause for denying the motion to quash and

in extending terminal date and in so doing expressed his rationale as follows:

"The idea in this case is whatever evidence bears on liability of the parties ought to be heard or ought to be presented on the administrative record and as far as the people who want to pay attention to that or think that there's relevant evidence in there ought to have a chance to look at it...."

What is to be considered jurisdictional and subject to review by the Appeals Board following a preliminary order is given further elaboration in K.S.A. 44-534a(a)(2) as follows:

"A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board."

Clearly, the record does not present an issue considered jurisdictional under K.S.A. 44-534a(a)(2). The Appeals Board must therefore decide whether this case otherwise demonstrates that the Administrative Law Judge exceeded his jurisdiction in granting the relief requested at the hearing, i.e., granting the Fund's motion to extend its terminal date and denying the respondent's motion to quash the notices to take depositions. See Sawyer v. Oldham's Farm Sausage Co., 246 Kan. 327, 787 P.2d 697 (1990).

The authority to set terminal dates and to grant extensions of such time limits is expressly given to the Administrative Law Judge by K.S.A. 44-523(b). The grounds for granting such extensions are specifically enumerated therein, and include "on application for good cause shown". Respondent contends that the Fund did not show good cause. The Administrative Law Judge ruled otherwise. As we have stated, it is not for the Appeals Board to reexamine the evidence on this point. Rather, it is our function to determine whether the Administrative Law Judge has exceeded his jurisdiction in making the order from which respondent appeals. Here the Administrative Law Judge clearly had the authority to decide the matter put before him and enter the order he did. Accordingly, the Administrative Law Judge has not exceeded his jurisdiction and his Order of February 4, 1994 should stand.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Robert H. Foerschler entered February 4, 1994, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

cc: Denise E. Tomasic, P.O. Box 171855, Kansas City, Kansas 66117-1855  
Karen D. Rein, 6917 West 76th, Suite 101, Overland Park, Kansas 66210  
Robert H. Foerschler, Administrative Law Judge  
George Gomez, Director